

Exhibit 25

Timothy W. Dake

Volume II
Cincinnati, OH

August 21, 2003

REVISED

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ORIGINAL

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The Procter & Gamble Company,

Plaintiff,

vs.

The Coca-Cola Company,

Defendant.

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: CASE NO.
: C-1-02-393
:
:
:
:

VOLUME II

DEPOSITION OF: TIMOTHY W. DAKE
TAKEN: By the Defendant
Pursuant to Subpoena

DATE: August 21, 2003

TIME: Commencing at 9:16 a.m.

PLACE: Dinsmore & Shohl
19th Floor
255 East Fifth Street
Cincinnati, Ohio 45202
BEFORE: S. Diane Farrell, RMR, CRR
William Schupp, CLVS
Notaries Public
State of Ohio

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1 I N D E X

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3 TIMOTHY W. DAKE PAGE

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5 Cross-Examination by Mr. Ivey 197

6

7 EXHIBITS MARKED REFERENCED

8 Defendant's Exhibit A 197 197

9 Defendant's Exhibit B 198 198

10 Defendant's Exhibit C 208 208

11 Defendant's Exhibit D 215 215

12 Defendant's Exhibit E 252 252

13 Defendant's Exhibit F 263 263

14 Defendant's Exhibit G 296 296

15 Defendant's Exhibit H 302 302

16 Defendant's Exhibit I 308 308

17 Defendant's Exhibit J 320 320

18 Defendant's Exhibit K 326 326

19 Defendant's Exhibit L 337 337

20 Defendant's Exhibit M 353 353

21 Defendant's Exhibit N 360 360

22 - - -

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1 profile referred, in this case, to a sourness to
2 taste?

3 A. Yes.

4 Q. Did time intensity profile always refer to
5 taste sensations?

6 A. I don't remember.

7 Q. Can you think of any examples where time
8 intensity profile was the term or the category
9 applied to tests you were involved with other than
10 matching sourness of a formula?

11 A. I don't remember if there were others or
12 not.

13 Q. In the time period of -- well, I tell you,
14 let's mark for identification the next exhibit, which
15 will be Exhibit K.

16 (Defendant's Exhibit K was marked for
17 identification.)

18 Q. What we have for Exhibit K here is
19 Laboratory Book Number VF-2092 assigned to Mr. Dake,
20 is that right?

21 A. Yes.

22 Q. And, again, this -- what we have attached

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1 to this Exhibit K is, I believe, two pages, starting
2 on 46 and running to 47. The date here is October
3 14, 1986. Do you see that at the top?

4 A. Yes.

5 Q. And the subject is the "Evaluation of
6 Minute Maid Plus Calcium Orange Juice Concentrate and
7 Single Strength Juice in One-Half Gallon Carton." Do
8 you see where I'm reading from?

9 A. Yes.

10 Q. This would have been an evaluation at the
11 Procter & Gamble Company of the calcium fortified
12 Minute Maid orange juice products, right?

13 A. That's what it appears from the -- from
14 the subject.

15 Q. Okay.

16 A. Yes.

17 Q. And one of the objectives of the
18 evaluation is solubility of the calciums in the
19 juice, is it not?

20 A. It looks like there was a measurement
21 done -- measurements done to determine soluble
22 calcium.

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1 Q. Okay. Now, in the category on the -- down
2 below where it says EDT -- "EDTA Titration" there are
3 three categories here. Looks like A, B and I believe
4 that's C, but it -- you know, it looks like the
5 letter is kind of torn off there or obscured for some
6 reason. Right under EDTA.

7 A. I see the A and B.

8 Q. Right. And then there's the marking next
9 to titration. I don't know --

10 A. There's a marking, although that is not an
11 EDTA titration in that column.

12 Q. Okay. That's titratable acidity, correct?

13 A. Yes.

14 Q. And at the bottom there it gives a
15 series -- well, actually it gives a calculation --

16 A. Yes.

17 Q. -- right?

18 A. Yes.

19 Q. Titratable acidity. Why was that
20 measurement made?

21 A. I don't remember.

22 Q. It has 0.6383 grams. Is that what you see

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1 there?

2 A. Yes.

3 Q. And it looks like acid, slash, 10 -- 100
4 milliliters, right?

5 A. Yes, yes.

6 Q. Have you heard the term "ionic acid"
7 before?

8 A. I don't know. I don't remember if I have
9 or not.

10 Q. Okay. Does this appear to be a
11 calculation of ionic acid here under this category,
12 titratable acidity?

13 A. I don't know what ionic acid means or at
14 least I -- yeah, if I did, I don't remember.

15 Q. All right. Moving back across to the
16 left under A, EDTA titration, there is -- there are
17 two columns there that are lined out. And then there
18 are -- looks like a third column --

19 A. Yes.

20 Q. -- which has cal, c-a-l; concentrate, it
21 looks like, c-o-n-c --

22 A. Yes.

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1 Q. -- equals 6.6 -- I'm not really sure what
2 the -- what am I looking at here?

3 A. 6.6 times .1.

4 Q. All right. So that is an X .1?

5 A. Yes.

6 Q. Okay. Over 20, is what that appears to
7 be, right?

8 A. Yes.

9 Q. Which gives you 0.330?

10 A. 0.0330.

11 Q. Yes. Okay. And what's the -- what's the
12 measurement unit below the 0.0330?

13 A. I believe that's moles per liter.

14 Q. Okay. Can you tell from the numbers there
15 how to convert the calcium concentration into a
16 percentage calcium by weight?

17 A. Yes.

18 Q. Okay. And approximately what would it be?

19 A. Well, first of all, you would need to know
20 the density of the product.

21 Q. Okay. The density of the product being?

22 A. The Minute Maid Plus Calcium --

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1 Q. Juice?

2 A. -- juice product.

3 Q. Okay.

4 A. You would take the .0330, multiply that by
5 40 approximately -- it's actually 40.08 -- which
6 would give you 0.132 grams per liter --

7 Q. Okay.

8 A. -- or -- let's see. Yes, that's right.
9 And then you would need to divide that by the
10 density, which for orange juice is going to be in the
11 neighborhood of 1.05 grams per cc.

12 Q. Okay.

13 A. And then, again, you would have to convert
14 from liters to, say, 100 grams to -- you want to get
15 the answer in grams per 100 grams, so there'd be some
16 decimal point moving around to do that.

17 Q. Okay.

18 A. And yeah, that's how you would do it.

19 Q. Okay. All right. Now, the 40.08, the
20 number that you attributed to calcium is what? You
21 told us earlier, but if you could just repeat what
22 that is.

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1 A. Could you repeat that?

2 Q. Sure. The 40.08 that you referred to with
3 regard to calcium is what measurement?

4 A. That is the molecular weight of calcium.

5 Q. Okay. Now, there appears to have been --
6 well, there's a -- there's a block up here where it
7 appears that there was a photograph. Do you see
8 that?

9 A. Yes.

10 Q. And above that, it looks like it says,
11 photo micrograph at 125 magnification, right?

12 A. Yes.

13 Q. Do you know what that photograph was?

14 A. It -- based on what's written there, I
15 would think it's a photograph of the -- of the orange
16 juice concentrate.

17 Q. Okay. And if you look on page 47, you'll
18 see a -- what appears to be another photograph --

19 A. Yes.

20 Q. -- at the top. This one for the single
21 strength juice, right?

22 A. Yes.

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1 Q. Okay. Now, in reviewing, I believe it was
2 Exhibit J, there was that reference to GF patent and
3 the, dash, tricalcium phosphate addition to
4 beverages --

5 A. Yes.

6 Q. -- and also the Minute Maid calcium
7 fortified products, which were using tricalcium
8 phosphate and calcium lactate. Were you aware of
9 other types -- other companies that had calcium
10 fortified products that they were attempting to bring
11 to market using other types of calcium than
12 tricalcium phosphate or calcium lactate?

13 MS. FERRERA: In 1986?

14 MR. IVEY: Right.

15 A. I don't remember if I did or not.

16 Q. Okay. What was it about calcium
17 hydroxide, calcium oxide, and calcium carbonate that
18 caused the Procter & Gamble Company to select and
19 pursue those compounds as the sources or potential
20 sources of calcium in the juice products?

21 A. In our particular execution of adding
22 calcium, those raw materials, I believe, gave us some